

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS  
MINUTES**

February 3, 2009

10:00 AM –2:00 PM

Conference Room 119 A/B, State Courts Building,  
1501 W. Washington St., Phoenix, Arizona

**MEMBERS PRESENT**

Allison Bones  
Dr. Jennifer J. Casaletto  
Joan Fox, DDS  
Professor Zelda Harris  
Laura Horsley  
Bridget Humphrey, Esq.  
Cheryl L. Karp, Ph.D.  
Honorable Joseph P. Knoblock  
Cmdr. Scott Mascher  
Honorable Dennis Lusk  
Patricia Madsen, Esq.  
Leah Meyers, GOCYF/DFW  
Honorable Wendy Million  
Chief Jerald Monahan  
Doug Pilcher  
Renaë Tenney  
Tracey Wilkinson  
Honorable Kristi Youtsey Ruiz

**TELEPHONIC**

Lt. Mark Carpenter  
Honorable Cathleen Brown Nichols

**MEMBERS ABSENT**

Honorable William O’Neil, Chair  
Barbara Appenzeller, CPA  
Tracey Hannah, Esq.  
Honorable Lynda J. Howell  
Honorable Jack Peyton  
Catherine Shugrue-Schaffner, Esq.

**STAFF**

Kay Radwanski  
Lorraine Nevarez

**Guests**

Stephanie Mayer, AzCADV  
Jannette Brickman, AzCADV  
Gloria Full  
Maria-Elena Ochoa, GOCYF  
Jami Cornish, Community Legal Services  
Amy Love, AOC  
Kendra Leiby, AzCADV

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**I. CALL TO ORDER**

**A. Welcome and Opening Remarks**

Judge O’Neil, Chair, was unable to attend the meeting. Judge Million acted as chair and called the February 3, 2009, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) to order at 10:15 a.m. Judge Million welcomed the newly and reappointed members to the committee. Also, Judge Million thanked the previous members on the committee for their time and effort.

## **B. Approval of Minutes from September 9, 2008**

Minutes of the September 9, 2008, meeting of the Committee on the Impact of Domestic Violence and the Courts were presented for approval.

**MOTION: Motion was made and seconded to approve the September 9, 2008, meeting minutes. Motion passed unanimously. CIDVC #09-01**

## **II. Morrison Institute Report: Pinal County Domestic Violence Court**

Dr. Richard Toon, Morrison Institute, presented the following results of a study of the Pinal County Domestic Violence Court. The main findings in the report are as follows:

- Cases were on average subject to judicial review eight times, resulting in the imposition of sanctions by judges in 47% of the reviews and by probation officers in 21% of reviews. One or more incentives were issued in 69% of the reviews.
- 61 (9%) offenders committed another offense while in the program.
- Offenders showed a statistically significant increase in their coping abilities as measured by the General Self-Efficacy Scale (GSE) during their period of supervision.
- Offenders showed a statistically significant decrease in their propensity for abusiveness to an intimate partner as measured by the Propensity for Abusiveness Scale (PAS) during their period of supervision.
- Offenders showed a statistically significant increase in their satisfaction with the criminal justice system during their period of supervision.
- Approximately 70% of treatment program cases (some offenders entered multiple programs) showed successful completions.
- 78% of offenders were drug-tested during the program; 31% of these had one or more positive results. Methamphetamine/amphetamines and marijuana were the most prevalent substances being abused.
- Program participants in the DV court program were 86% male, 59% Non-Hispanic White, 28% Hispanic/Latino, and an average of 33 years old; 45% were married or separated and the rest were single; 65% were employed full-time and 25% were unemployed; fewer than half had completed high school.
- 76% were convicted of misdemeanor offenses and 24% of felonies. The most common offenses were disorderly conduct (41%), assault (27%), and aggravated assault (10%).

Dr. Toon explained that these results suggest that the program has had positive effects. The study is not longitudinal as the measures were applied at the time offenders had completed the program. To study long-term results, researchers would need a control group, more pre- and post-test results, recidivism data beyond offenders' program involvement, and victim feedback.

### **III. Community Conversation**

Maria-Elena Ochoa, director of the Division for Women, Governor's Office for Children, Youth and Families (GOCYF), and Allie Bones, executive director of the Arizona Coalition Against Domestic Violence (AzCADV), presented a report on a recent Community Conversation. In September 2008, the Governor's Office, Department of Economic Security, and AzCADV formed a partnership and sponsored a community conversation about pressing needs for DV victims. The focus of the discussion was on shelters services, including access as well as safety and protection for families in domestic violence situations. The community conversation, attended by 142 participants representing 11 counties, led to valuable information and recommendations such as having more community collaboration, family-centered approach, training, improved offender treatment, and funding. The goal is to alleviate shelter turn-aways. Although the number of shelter beds has increased since 2005, victim turn-away still is high. Turn-aways occur for other reasons, such as a too-large family, the age and gender of the victim's children, and mental illness. Suggested changes in the justice system included: improved communication between law enforcement and the courts; more free legal services; improved accountability for offenders; one family/one judge case assignment; stronger prosecution; longer sentences for criminal DV offenders, and improved service of protection orders.

### **IV. Report and Rule Petition of Advisory Committee on Supreme Court Rule 123 and Data Dissemination**

Honorable Michael Jeanes, Clerk of the Superior Court in Maricopa County, and Chair of the Advisory Committee on the Supreme Court Rule 123 and Data Dissemination, presented the committee's recommendations.

In December 2007, Chief Justice Ruth V. McGregor established the Ad Hoc Advisory Committee on Supreme Court Rule 123 and Data Dissemination. The Chief Justice charged the committee with examining and making recommendations regarding Rule 123, Rules of the Supreme Court of Arizona, and governing access to records maintained by the judiciary, specifically in the areas of bulk data, database access, data retention, case look-up websites, and any additional Rule 123 issues needing resolution. The committee examined each of these topics and drafted revisions to Rule 123 and the Civil and Criminal Rules that it believes will better serve the public and the court community by providing greater access to court records.

Because of time constraints, the committee was unable to circulate the proposed rule changes for comment to the broader court community prior to filing the petition. However, Mr. Jeanes told CIDVC members that the rule petition has been filed and comments can be posted on the [Court Rules Forum webpage](#) until April 1, 2009. The committee has until May 8, 2009, to submit an

amended petition, if modification is warranted after reviewing comments.

## **V. Protective Orders and Public Access**

Staff discussed compliance with the federal Violence Against Women Act (VAWA) and publication of plaintiff information on the Internet. Pursuant to 18 USC § 2265(d)(3), information that may reveal the identity or location of a person who has obtained a protection order cannot be published on the Internet. Plaintiff information in protection order cases is no longer available on the Arizona Judicial Branch Public Access website. However, the records are public and available for review at the courthouses. The issue has been raised as to whether all protective order cases should be removed from the Public Access website. A recommendation from CIDVC was sought on this issue. The issue also will be presented to the Limited Jurisdiction Committee and the Committee on Superior Court. Some of the circumstances that might warrant removal of all protective orders cases are:

- The true victim gets to the courthouse second and is named as the defendant (part of the DV dynamic, where a victim feels powerless or helpless or does not know how to navigate the judicial system).
- Cross-complaints are filed and orders granted on each. A party's name is protected on the order where he/she is named as Plaintiff but not on the cross order where the party is labeled as Defendant.
- In some circumstances, a defendant does not have an opportunity to contest the order. Example: Plaintiff files on Friday; Defendant is served on the same day and excluded from the residence. On Monday, Plaintiff requests that the order be quashed. Defendant has not had an opportunity to request a hearing because the order was quashed before Defendant could file a hearing request. Defendant's name still appears on Public Access.

### Committee members offered the following options:

- Publish only cases in which an order has been affirmed after a contested hearing. This would solve due processes issues regarding the defendant's ability to contest the order.
- Leave the defendant's information and the case history on the Internet because it is helpful to the plaintiff, legal advocates, and for safety planning. For example, law students in the Domestic Violence Clinic at the University of Arizona rely on the site to analyze and prepare cases for court. The information on the site may help a petitioner or the petitioner's legal advocate establish a pattern of domestic violence. The information also is part of the public record.
- As a matter of privacy, remove all protection order cases from the Public Access website.

Staff will continue to research how other states and local court sites are handling remote access to DV cases.

## **VI. U.S. v. Hayes and the Lautenberg Amendment**

Leah Meyers, GOCYF, reported on U.S. v. Hayes and the Lautenberg Amendment. In November 2008, the U.S. Supreme Court heard oral argument on this Fourth Circuit case arising out of West Virginia. In 1994, the defendant, Randy Hayes was convicted of battery upon his wife. The battery was considered a “misdemeanor crime of domestic violence” (MCDV) and, as such, because of the Lautenberg prohibition, Hayes was not permitted to own or possess firearms. The Lautenberg Amendment to the federal Gun Control Act imposes a lifetime ban on a person who has been convicted of a misdemeanor DV offense from possessing, owning, or selling firearms. Ten years after the battery conviction, Hayes was found in possession of a rifle. He was indicted for possession of the firearm after having been convicted of an MCDV. He appealed, arguing that West Virginia’s battery statute is not an MCDV under federal law because it does not contain, as an element, a requirement that the defendant and plaintiff be related to each other. The district court denied Hayes’ motion to dismiss the indictment. He appealed to the Fourth Circuit, which overturned the district court’s decision. The case was then appealed to the U.S. Supreme Court. If the U.S. Supreme Court affirms the district court’s decision, Arizona criminal laws as they apply to DV misdemeanors could be affected. The U.S. Supreme Court’s decision is expected soon.

## **VII. Workgroup Reports**

- A. DV Forms and Process Workgroup (Hon. Elizabeth Finn, Chair) – No update at this time.
- B. DV Resource Book (Hon. Michelle Lue Sang, Chair) – Presentation to the committee under agenda item “DV Resource Book.”
- C. Best Practices (Hon. Wendy Million) - No update at this time.
- D. DV Education Workgroup (Vacant- Chair) – No update at this time.
- E. Legislative Workgroup – The committee decided to disband the workgroup as CIDVC is not proposing legislative changes at present.

## **VIII. DV Resource Book**

Judge Million explained that the Education Services Division, Administrative Office of the Courts (AOC), has taken responsibility for updating the DV Benchbook. However, the Publications Committee of the Supreme Court has asked CIDVC to take over the resources section of the benchbook and publish it as a separate CIDVC-sponsored document. Leah Meyers advised that GOCYF maintains the same information in its “Breaking the Cycle” pamphlet. She said GOCYF updates the information regularly. As GOCYF is performing this task, CIDVC members agreed there is no need for the committee to duplicate the work of the Governor’s Office. Therefore, the DV Resource Book will be discontinued.

## **IX. AzCADV Cell Phone Project**

Allie Bones, AzCADV, informed the committee that the Coalition has partnered with Shelter Alliance to raise money through cell phone recycling. Up to \$30 (or more) will be earned for each donated phone. Shelter Alliance offers environmentally responsible, zero landfill cell phone recycling. Interested members can find out more about the program at [http://shelteralliance.net/shipments/?org\\_name=Arizona%20CADV.%20AZ](http://shelteralliance.net/shipments/?org_name=Arizona%20CADV.%20AZ).

## **X. AOC Legislative Update**

Amy Love, AOC legislative analyst, discussed the court impact of the following proposed legislation:

### **SB1063: DOMESTIC VIOLENCE VICTIMS; FEE EXEMPTIONS (WARING)**

Exempts an individual who is receiving services from a domestic violence shelter from being responsible for various fees related to driver licenses.

### **SB1068: AGGRAVATED ASSAULT; STRANGULATION AND SUFFOCATION (PATON)**

Classifies suffocation and strangulation as aggravated assault.

### **SB1087: AGGRAVATED DOMESTIC VIOLENCE; VIOLATION (PATON)**

Reclassifies a second offense of domestic violence to aggravated domestic violence if it occurs during the 84-month look back period. A second offense of domestic violence within 84 months, instead of a third offense, requires a mandatory minimum of four months in jail. A third, instead of fourth or subsequent, offense of domestic violence within 84 months requires a mandatory minimum of 8 months in jail.

### **SB1088: DOMESTIC VIOLENCE; DATING RELATIONSHIPS (PATON)**

Expands the definition of domestic violence to include current or previous significant romantic or sexual relationships between the victim and defendant. Requires the court to consider the following criteria in order to determine that a relationship is or was serious:

- Type and length of the relationship
- Frequency of interaction
- Length of time since termination.

### **SB1106: DOMESTIC VIOLENCE; CHILD CUSTODY (PATON)**

Authorizes a court granting custody of a child to not consider which of the parents is more likely to allow the child continuing contact with the other parent only if the court determines that one parent is acting in good faith to protect the child from domestic violence or child abuse. Requires

the court to make written findings of fact in addition to considering all of the relevant factors to determine if a person has committed an act of domestic violence. The presumption that the award of custody to a parent who committed an act of domestic violence must be rebutted by clear and convincing evidence. Requires the court to make written findings of fact in determining if the parent has rebutted the presumption and has demonstrated by clear and convincing evidence that being awarded sole or joint custody is in the child's best interest.

#### **SB1120: DOMESTIC VIOLENCE OFFENSES (PATON)**

Expands the definition of domestic violence in Title 13 to include several new offenses, including:

- Dangerous crimes against children
- Murder
- Sexual assault
- Burglary
- Criminal damage
- Interfering with judicial proceedings
- Disorderly conduct
- Cruelty to animals
- Preventing use of a telephone in emergency

### **XI. AzCADV Legislative Update**

Kendra Leiby, AzCADV systems advocate, discussed the Coalition's priorities for the current legislation session. She noted that the Coalition is working closely with the AOC on proposed amended language to SB1106, regarding domestic violence and child custody. AzCADV provided an information sheet on its legislative agenda. The priorities listed include:

Budget: The Coalition advocates maintenance of the domestic violence line item, with appropriations toward the greatest represented needs throughout the state being a top priority.

SB1106: domestic violence; child custody: An amendment to ARS § 25-403, stipulating that if a parent is acting in good faith to protect his or her child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse, the Court may not use such action against the parent when determining the best interests of that child in a custody dispute. It also stipulates that if the Court finds that a parent has committed an act of domestic violence, that parent has the burden of proving, by clear and convincing evidence, that parenting time will not endanger the child or significantly impair the child's emotional development.

SB1088: domestic violence; dating relationships: An amendment to the current domestic violence statute to include and recognize victims of domestic violence in a "dating relationship" or a "romantic or sexual relationship." The legislation AzCADV supports will be modeled after Minnesota's, which states: "...in determining whether persons are or have been involved in a significant romantic relationship, ...the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has

terminated, length of time since termination.”

SB1068: aggravated assault; strangulation and suffocation: Due to the fatality potential and the correlation between intentional strangulation/suffocation and homicide in domestic violence cases, AzCADV insists on holding perpetrators accountable for this crime. To do so, AzCADV is supporting legislation that would increase and define the penalties for intentional strangulation and suffocation offenses per domestic violence as a felony 4.

SB1087: aggravated domestic violence; violation: currently in Arizona, if a perpetrator has been convicted of two misdemeanor domestic violence offenses, the third and subsequent domestic violence misdemeanor offense committed within a period of seven years can be charged as a felony. This session AzCADV has introduced legislation making the second and subsequent misdemeanors a felony, enabling prosecution to hold repeat offenders further accountable.

SB1120: domestic violence offenses: Arizona’s current domestic violence statute (13-3601) does not cite a number of crimes as domestic violence and in an attempt to lend the statute more clout, AzCADV has introduced legislation defining burglary, prevention from using a telephone in an emergency, homicide, cruelty to animals, and sexual assault as domestic violence related crimes, given the victim and perpetrator pass the relationship test.

## **XII. Call to the Public**

No public comment.

**Announcement: Glendale Police Department STOP Grant - DV Summit and Satellite Broadcast --** The Glendale Police Department received a STOP grant of \$41,000 to develop a satellite broadcast and a domestic violence summit in October 2009. Members of the law enforcement, courts, prosecutors, and advocacy groups will be invited to attend the conference. The goal is to bring these communities together to provide useful information and to create awareness of each group’s role in addressing domestic violence.

## **XIII. Adjournment**

The meeting was adjourned at 1:55 p.m.

### **Next Meeting:**

Tuesday, May 12, 2009

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 119 A/B